

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DONALD J. RICHARD )  
Plaintiff )  
v. )  
INDUSTRIAL COMMERCIAL )  
ELECTRICAL CORPORATION )  
Defendant )

CIVIL ACTION NO. 04-40066-NMG P 12:49

U.S. DISTRICT COURT  
DISTRICT OF MASS.VERIFIED COMPLAINT  
WITH REQUEST FOR  
INJUNCTIVE RELIEF

04-40066-NMG

1. The Plaintiff, Donald J. Richard is a resident of Winchendon, Massachusetts.
2. The Defendant, Industrial Commercial Electrical Corporation (hereinafter "ICE") is a Massachusetts Corporation with its principle place of business in Hopedale, Massachusetts.
3. The Plaintiff brings this action under, and the jurisdiction of this Court is based upon Employee Retirement Security Act of 1974 §601 et seq. as amended 29 U.S.C. §1161 et seq. 1162(2)(A(i); 1163 (2).
4. The Court has authority under Federal Rules of Civil Procedure Rule 65.
5. The Plaintiff was an employee of ICE and/or its predecessor from on or about 1992. During his employment the Plaintiff was classified as a Data Technician.
6. On or about April 16, 2004, the Plaintiff was told in substance by Karl Walsh, a Director of ICE that "he must tell him where David LeBlanc (David Le Blanc was the Chief Operating Officer of ICE) lives---and if I like my job, and you know what is good for you, you will bring me down to Dave's house----."

RECEIPT # 404311  
AMOUNT \$ 50.00  
SUMMONS ISSUED ✓  
LOCAL RULE 4.1 ✓  
WAIVER FORM ✓  
MCF ISSUED ✓  
BY DPTY. CLK. S. Jones  
DATE 5-3-04

7. The Plaintiff responded "I am not taking you down there, it is not my responsibility to tell you where David lives." Walsh then told the plaintiff "if you like your job and you know what is good for you, you will bring me to Dave's house." Shortly thereafter, the Plaintiff was called on his "cell" phone and was told by Walsh "If I don't hear from you in ten (10) minutes consider yourself terminated." The Plaintiff did not call back and was terminated.

8. As a full time employee the Plaintiff was covered by a family health insurance plan provided and offered by the Defendant to its employees.

9. On April 21, 2004, the Plaintiff went to the Company office to pick up his pay check. At that time he met with William Burns who identified himself as the Company's attorney. Burns told the Plaintiff that he was terminated for "stealing." The Plaintiff responded that he did nothing wrong, and asked for the necessary papers to provide him with COBRA coverage. Burns told him that the Company was not going to offer him COBRA coverage.

10.. The Plaintiff's dependent wife is handicapped suffering from "multiple sclerosis" (MS) and was at all times covered under the family health insurance plan offered by the Defendant. In addition to MS, the Plaintiff's wife has chronic obstructive pulmonary disease, Hashimoto disease, depression and PTSD. She requires substantial medication and medical care. Burns and the Defendant were at all times aware of the Plaintiff's wife's medical condition.

11. The Plaintiff's work performance was never criticized nor has the Plaintiff ever engaged in any misconduct.

12. Defendant's termination of the Plaintiff was arbitrary and capricious and the Plaintiff is entitled to the COBRA benefits.

13. As a matter of fact and law the Plaintiff's termination was not based upon any "gross misconduct."

14. The termination and/or threat to terminate the Plaintiff's medical benefits constitutes irreparable harm to the Plaintiff.

15. The Plaintiff has no adequate remedy at law.

16. There is a substantial likelihood of Plaintiff's success on the merits.

WHEREFORE, Plaintiff requests the following relief:

1. This Court grant a Temporary Restraining Order allowing the Plaintiff, Donald J. Richard to make an election under Consolidated Omnibus Budget Reconciliation Act (COBRA) 29 U.S.C. § 1161 et seq., and to have continuing coverage under the Defendant's Health Insurance Plan until either the case is determined on its merits or until 18 months after the Plaintiff's termination date.

2. That the Court grant a Preliminary Injunction allowing the Plaintiff, Donald J. Richard to make an election under Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. § 1161 et seq., and to have continuing coverage under the Defendant's Health Insurance Plan until either the case is determined on its merits or until 18 months after the Plaintiff's termination date.

3. The Preliminary Injunction should be made permanent.

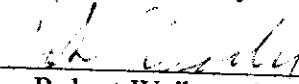
4. The Court should relieve the Plaintiff of the requirement of posting security.

5. The Court award the Plaintiff his costs and attorney fees associated with this proceeding.

6. The Court grant such other and further relief as it deems proper.

DONALD J. RICHARD,

By his attorney

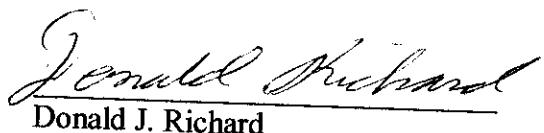
  
\_\_\_\_\_  
Robert Weihrauch  
446 Main Street 20<sup>th</sup> floor  
Worcester, MA 01608  
508-752-7549  
BBO# 519240

Verification

Now comes the Plaintiff herein, and states that he has read the foregoing Complaint and that the allegations contained therein are known to him to be true, except for such allegations as are based on information and belief, which allegations he believes to be true.

Subscribed and sworn to under the penalties of perjury this 30 day of ~~May~~, 2004.

APRIL.

  
Donald J. Richard

**CERTIFICATE OF SERVICE**

I, Robert Weihrauch hereby certify that I served a copy of the Complaint and covering letter on the Defendant by Facsimile Transmission on April 30, 2004.

  
\_\_\_\_\_  
Robert Weihrauch

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

CONRAD J RICHARD

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Winkrauch  
444 Main St 2nd Floor  
Worcester MA 01603 Tel 505-752-7547

## DEFENDANTS

INDUSTRIAL COMMERCIAL  
ELECTRICAL CORPORATION

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question  
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

Citizen of This State

PTF DEF

 1  1

Incorporated or Principal Place of Business in This State

PTF DEF

 4  4

Citizen of Another State

 2  2

Incorporated and Principal Place of Business In Another State

 5  5

Citizen or Subject of a Foreign Country

 3  3

Foreign Nation

 6  6

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

## CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability

## TORTS

## PERSONAL INJURY

- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Manne Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury

## PERSONAL INJURY

- 362 Personal Injury — Med. Malpractice
- 365 Personal Injury — Product Liability
- 368 Asbestos Personal Injury Product Liability

## PERSONAL PROPERTY

- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

## FORFEITURE/PENALTY

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881

- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.
- 660 Occupational Safety/Health
- 690 Other

## BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

## PROPERTY RIGHTS

- 820 Copyrights
- 830 Patent
- 840 Trademark

## LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations

## SOCIAL SECURITY

- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWV (405(g))
- 864 SSDI Title XVI
- 865 RSI (405(g))

## FEDERAL TAX SUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS — Third Party 26 USC 7609

## OTHER STATUTES

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc.
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 810 Selective Service
- 850 Securities/Commodities/Exchange
- 875 Customer Challenge 12 USC 3410
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes
- 890 Other Statutory Actions

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from  
 5 another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from  
 7 Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.  
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. 1161(a), 1163(f), Refusal of CBA coverage

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

YES  NO

## VIII. RELATED CASE(S)

(See instructions):

JUDGE

JURY DEMAND:  YES  NO

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

DATE  
May 3, 2004  
FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

04-40066

1. Title of case (name of first party on each side only) Richard v Industrial  
Electrical Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ✓ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert Keith O'Clock  
 ADDRESS 146 Main St 20th fl., Worcester, MA 01608  
 TELEPHONE NO. 508-752-7549